IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 16863 of 2007

Dated 26th September, 2007

Between

Sri Krishna Impex,
D.No.204, Tejasvi Apartments,
Dwarakapuri Colony, Panjagutta, Hyderabad,
Rep. By its Proprietor Y.Krishna Murthy

…..Petitioner

and

The Animal Husbandry Department,
Rep. By its Director, Government of AP,
Shanti Nagar, Near Masab Tank, Hyderabad, and ors

…Respondents

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 16863 of 2007

ORDER:

The petitioner a proprietary concern, has filed this Writ Petition seeking Writ of Mandamus to declare the action of the first respondent in proceeding with the tender process pursuant to the tender Note No. 11012/FI/F1/2007-BRP, dated 25-7-2007, for supply of Milch Cattle (Cows and Buffaloes) and Heifer Calves to the Animal Husbandry Department for the year 2007-08, as illegal and arbitrary.

The Director, Animal Husbandry Department issued the above said tender notification on 25-7-2007. The tender schedule and the note appended to it read as follows:

*" **Tender Schedule**:*

1.Bid document schedule opening date : 28-07-2007 from 11.00 AM

*2. Pre-Bid conference** :01-08-2007 at 11.00 AM*

3. Bid document schedule closing date : 05-08-2007 at 5.00 PM

4. Bid submission closing date : 06-08-2007 at 2.00 PM

5. Technical bid opening date :06-08-2007 at 3.00 PM

6. Financial Bid opening date :07-08-2007 at 3.00 PM

Note: Bidders should obtain digital certification from APTS, Hyderabad

*** The bidders are hereby notified that a pre-bid conference will be organized on 1-8-2007 in the conference Hall of Directorate of animal Husbandry, AP., Shanthinagar, Hyderabad to clarify doubts in tendering procedure under e-procurement process*."

In the Writ Petition, it is the case of the petitioner that though he approached the second respondent on 2-8-2007 to obtain Digital Certification, but however, they did not provide Key, CD and password on the ground of non-availability. It is the grievance of the petitioner that he made representation to the first respondent on 6-8-2007 to postpone the tender process and in spite of the same, no action was taken. It is the further grievance of the petitioner that though the value of the contract is of high magnitude, but 15 clear days' time was not given between the issuance of notification and opening of tenders.

Counter affidavit is filed by the first respondent stating that in the first instance, tender notification was given on 6-7-2007, but however, due to some technical reasons, the same was cancelled and second call of tender notification was given on 25-7-2007, and, as per the same, bid document schedule opening date was fixed on 28-7-

2007, and the last date for submission of bid was fixed as 6-8-2007. It is stated that as much as the notice dated 25-7-2007 was the second call, seven days clear time was given from the date of publication of tender notice to the date of receipt of tenders and the said tender notice was published in the leading daily news papers, viz., The Times of India, Eenadu and Vartha. Though a pre-bid conference was conducted on 1-8-2007, but the petitioner did not participate in the said conference. It is stated that the petitioner made a representation at 2.30 PM on 6-8-2007, i.e. after expiry of the closing date for bid submission, and, in view of the same, the representation of the petitioner was rejected. It is further stated that technical bid was opened at 3.00 PM on 6-8-2007 and financial bid was opened at 3.00 PM on 7-8-2007 and State Level Tender Committee scrutinized the rates quoted by the bidders and recommended for approval of the Government. After approval of the rates by the Government, the Animal Husbandry Department had entered into agreement with the five successful bidders, namely, M/s. Sri Ayyappa Enterprises, Hyderabad, AP, M/s. Bharat Livestock Agency, New Delhi, M/s. Khurana Dairy Farm, Rohtak, Haryana State, M/s. Sachdeva Dairy Farm, Rohatak, Haryana State and M/s. Sri Vigneshwara Agencies, Hyderabad, AP. It is also stated in the counter affidavit that the qualified bidders have already started supply of milch cattle in accordance with the terms and conditions of the agreement.

Separate Counter affidavit is filed by the second respondent stating that the role of the second respondent is confined only to the extent of providing Digital Certificate. It is stated that whoever is desirous of registering with E-procurement Platform, they have to pay application fee of Rs.1200/- and on such payment, it will provide Enrollment Kit which includes one USB Token, one Driver CD for USB Token, Digital Certificate Installation & User Guide, and, Certificate

Request Form. It is further stated that the petitioner never approached the second respondent and requested for enrollment kit and the petitioner directly approached the e-seva center, Khairatabad at the last moment on 6-8-2007 and he did not submit filled up Certificate Request Form to the second respondent. In the counter affidavit, the second respondent specifically denied the allegation of the petitioner that when the petitioner approached the second respondent on 2-8-2007, they did not provide keys as they were not available and the same would be made available on 8-8-2007.

Heard, Sri Seetaram Chaparla, learned Counsel appearing for the petitioner, learned Government Pleader appearing for the first respondent and Sri C.Raghu, learned Counsel appearing for the second respondent.

In this case, it is submitted by the learned Counsel for the petitioner that though the petitioner approached the second respondent, he was not provided with Digital Certificate and, as such, in spite of making representation, the first respondent did not postpone the tender process. It is further submitted that even in absence of any fault on the part of the petitioner, he was deprived of participation in the tender process.

On the other hand, it is submitted by the learned Government Pleader appearing for the first respondent and Sri C.Raghu, learned Counsel appearing for the second respondent that though the first tender notification was issued as early as on 6-7-2007, but the same was cancelled due to some technical reasons, and second call of tender notification was given on 25-7-2007, and, in spite of the same, the petitioner did not approach the authorities to submit the bid within the time prescribed for participation in the tender process. It is submitted that the petitioner submitted representation only after expiry

of the closing time for submission of Bid on 6-8-2007. It is further submitted that tender process is already completed and supply has begun in view of award of contract to five successful bidders, and, there are no grounds to interfere with the tender process at this stage.

In this case, it is to be noted that even in the second call of tender notification dated 25-7-2007, bid document schedule opening date was notified as 28-7-2007 from 11.00 AM. There was also pre-bid conference on 1-8-2007. But at no point of time, the petitioner made any attempt to participate in the tender process pursuant to the tender notification dated 25-7-2007. In the tender schedule, bid submission closing date and time was mentioned as 6-8-2007 at 2.00 PM. In the counter affidavit filed by the first respondent, it is specifically stated that the petitioner made representation for postponement of tender process only at 2.30 PM on 6-8-2007, i.e. after expiry of bid submission closing time on 6-8-2007. Even in the tender schedule, as per the note, it was specifically stated that bidders should obtain digital certification from AP Technology Services, second respondent herein. Though it is the case of the petitioner that he approached the second respondent on 2-8-2007 pursuant to the second call of tender notice, but however, the same is categorically denied in the counter affidavit filed by the second respondent. In the counter affidavit filed by the first respondent, it is categorically stated that as per the tender notice, technical bid was opened on 6-8-2007 at 3.00 PM and Financial Bid was opened on 7-8-2007 at 3.00 PM, and on approval of the rates by the Government, contracts were already awarded in favour of the bidders, namely, M/s. Sri Ayyappa Enterprises, Hyderabad, AP, M/s. Bharat Livestock Agency, New Delhi, M/s. Khurana Dairy Farm, Rohtak, Haryana State, M/s. Sachdeva Dairy Farm, Rohatak, Haryana State and M/s. Sri Vigneshwara Agencies, Hyderabad, AP. Though it is contended by the learned Counsel for the petitioner that fifteen days' time between the notification and opening of tenders was not given, but however, there

is no mandatory rule as such for providing such time. As much as first tender notification was given on 6-7-2007 and the same was cancelled due to some technical reasons, second call of notification was given on 25-7-2007 and closing date for submission of bid was fixed as 6-8-2007. In that view of the matter, it cannot be said that there was no reasonable time given for the bidders to participate in the tender process. In any event, as much as, on approval of the rates by the Government, agreements were already entered into with the qualified bidders, namely, M/s. Sri Ayyappa Enterprises, Hyderabad, AP, M/s. Bharat Livestock Agency, New Delhi, M/s. Khurana Dairy Farm, Rohtak, Haryana State, M/s. Sachdeva Dairy Farm, Rohatak, Haryana State and M/s. Sri Vigneshwara Agencies, Hyderabad, AP, but, they are not made as party respondents in the Writ Petition. As much as third party rights have come into picture and, no steps have been taken to implead the above said five successful bidders as party respondents, I do not find any ground warranting interference with the tender process, which was already completed, by this Court in this petition filed under Article 226 of the Constitution of India.

The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 26th September, 2007.
Msnr.